



United States Department of the Interior

BUREAU OF LAND MANAGEMENT FILLMORE FIELD OFFICE

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Fillmore, UT 84631
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RECEIVED

OCT 19 2001

**DIVISION OF
OIL, GAS AND MINING**

In Reply Refer to:
3715/3600
(U-010)
UTU-072898
UTU-072889

October 17, 2001

CERTIFIED MAIL # 7000 1530 0006 2414 7909
RETURN RECEIPT REQUESTED

ORDER

LAWRENCE FAHN	:	43 CFR 3715
PRESIDENT	:	Notice of
NEWCO GUYANA INC	:	Noncompliance
204 ELKIN CT	:	43 CFR 3600
DELMAR NY 12054	:	Notice of Trespass

Dear Mr. Fahn:

On August 23, 2001, a surface compliance inspection (SCI) conducted at the site of your 43 CFR §3809 mining notice (Notice) located in T. 12 S., R. 5 W. Section 5, and serialized UTU-072898.

During this inspection it was noted that 2.0 miles of road leading from the Weiss Highway to the mine site described in your Notice had been widened and upgraded from the unimproved two-track path that had previously existed. A subsequent phone call to your contractor, Sid Hullinger, revealed that his company had conducted the road work in anticipation of hauling ore from the mine site. Mr. Hullinger also stated that gravel from a nearby Juab County free-use site (UTU-072889) had been used to upgrade the road.

43 CFR states that a notice will include:

"...a description and location of access routes to be constructed and the type of equipment to be used in their construction. Access routes shall be planned for only the minimum width needed for operations..."

Your Notice did not include a description of the roadwork noted in the August 23 inspection. Therefore, you are in noncompliance with 43 CFR §3809.1-3(c)(3). Both Sid Hullinger and Dave Adkins of your

company were informed of this on August 30, 2001, and it was agreed that your company would submit an application for a FLPMA Right-of-Way (ROW) for the road, and to pay for the gravel removed in trespass from the Juab County Free-Use Pit (FUP). As of the date of this notice, neither the application nor payment has been received.

Since you have not submitted the ROW application, we have no choice but to demand that you amend your Notice to include the road. However, another SCI conducted on October 9, 2001, has revealed that the additional surface disturbance created by the roadwork increases your total disturbed acreage to 9.0, which is over the five acres allowed under a Notice. Therefore, you must submit a Plan of Operations.

Calculations made from data collected on the October 9, 2001 indicate that 1,972 cubic yards of gravel were removed from the FUP during the roadwork. The SCI also revealed the following items that constitute a 43 CFR §3715 occupancy:

1. a Water Tank that has been on site for over four years;
2. Two wells cased and capped that appear to be water wells. Also, the Utah Division of Water Rights shows no record of any water right being issued at the location.

Since your operation does include an occupancy, your failure to purchase the gravel from the Juab County FUP and to submit a Plan of Operations prior to conducting the roadwork is a violation of the following regulations:

43 CFR §3603.1 Except when authorized by sale or permit under law and the regulations of the Department of the Interior, the extraction, severance or removal of mineral materials from public lands under the jurisdiction of the Department of the Interior is unauthorized use. Unauthorized users shall be liable for damages to the United States, and shall be subject to prosecution for such unlawful act (see subpart 9239 of this title).

43 CFR §3715.3-1(a) You must not begin occupancy until you have complied with either 43 CFR part 3800 subpart 3802 or 3809 and this subpart, and BLM has completed its review and made the required determinations under the applicable subparts...

43 CFR §3715.6(b) Except when other applicable laws or regulations allow, BLM prohibits the following: Beginning occupancy before filing, review, and approval or modification

of a plan of operations under 43 CFR part 3800, subparts 3802 or 3809.

A copy of the 43 CFR §3715 regulations have been enclosed for your convenience.

Within 30 days of receipt of this order, you must take the following corrective actions:

1. Either complete and submit the FLPMA Right-of-Way applications sent to Dave Adkins on August 30, 2001

or
2. Submit a Plan of Operations and an interim financial guarantee of \$45,000 (9.0 acres X \$5000 per acre); and
3. Remit to this office \$690.20 (1,972 cubic yards X \$0.35 per cu. yd.) as payment for unauthorized removal of the gravel.

Failure to complete the above steps will result in a temporary or permanent cessation order. Failure to comply with this Notice of Noncompliance and/or subsequent cessation order may result in fines, or imprisonment or both.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR §4.21 (58 FR 4939, January 19, 1993) or 43 CFR §3715.9 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR §4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standard for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors the stay.

If you have any questions regarding this notice of noncompliance, please call Jerry Mansfield at (435) 743-3125.

Sincerely,



Rex Rowley
Field Office Manager

Enclosure:

43 CFR 3715

cc: Brandon Steele, 1055 N 400 E, Nephi, UT 84648
Darrell Steele, 1055 N 400 E, Nephi, UT 84648
D. Wayne Hedberg, UDOGM (S/023/033)
Robert L. Morgan, State Engineer, Utah Division of Water
Rights, PO Box 146300, SLC, UT 84114-6300
Tim B. Hannifin, MSHA